

STATE OF MICHIGAN
COURT OF APPEALS

VILLAGE OF MONTGOMERY,

Plaintiff-Appellee,

v

DAVID DELMAR ROBEY,

Defendant-Appellant.

UNPUBLISHED

May 6, 2010

No. 290927

Hillsdale Circuit Court

LC No. 08-000662-CE

Before: OWENS, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order requiring him to "remove all junk and rubbish" from his property within the plaintiff village, and "either make all necessary repairs . . . to bring it into compliance with Plaintiff's ordinance and with all other applicable building codes or . . . demolish the residence and remove all debris" We affirm.

Plaintiff filed a complaint for injunctive relief, asserting that defendant owned and occupied a parcel in violation of ordinances prohibiting improperly stored junk or rubbish, and asserting that plaintiff had repeatedly asked defendant to ameliorate the problem but to no avail.

Defendant, who has proceeded *in propria persona* throughout this case, failed to answer. A default was entered, and defendant filed no motion to set it aside. Instead, on the date of the default judgment proceeding, defendant filed a "Motion to Abate Complaint," which argued for relief on the ground that the complaint failed to present his name in accord with the best stenographic practice, and failed to identify the subject property for use of a disfavored abbreviation for "Michigan", and for failure to include the zip code.

At the hearing to determine the default judgment, defendant challenged "[j]urisdiction over the venue as well as jurisdiction of a persona." In response, the trial court elicited from defendant that he did in fact own the property, and that the property was in Hillsdale County, then reiterated that it had jurisdiction.

Plaintiff then called its village president, who testified that defendant violated both an ordinance against "junk, dismantled, non-operative, or nonlicensed motor vehicle storage," and one concerning dilapidated buildings. The witness described defendant's property as harboring several unlicensed vehicles, along with a building that was "burned down and abandoned." When invited to cross-examine, defendant replied, "I object to the process because of . . . a lack of due process." The trial court then reminded defendant that he had been properly served, yet

failed to answer, but that this was his chance to “address a defense.” Defendant then answered, “I have nothing to say.”

The trial court decreed that it had received sufficient proof that defendant had violated the ordinances, and that it would grant judgment ordering defendant to bring his property in compliance within 90 days or else allowing plaintiff to enter and remedy the situation.

On appeal, defendant challenges the trial court’s subject-matter jurisdiction to decide this case, and additionally argues that the court should have assisted his litigation efforts through “curative notations” and opportunities to file additional or alternative pleadings or motions.

The existence of jurisdiction is a question of law that we review de novo. *W A Foote Mem Hosp v Dep’t of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995). A trial judge’s general conduct of trial is reviewed for an abuse of discretion. See *In re King*, 186 Mich App 458, 466; 465 NW2d 1 (1990). “An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006).

“Once the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court” MCR 2.603(A)(3). “A motion to set aside a default . . . , except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.” MCR 2.603(D)(1). In this case, the trial court appeared to show some willingness to treat defendant’s motion to abate the complaint as a motion to set aside the default, but in the event concluded that defendant’s submission was “unintelligible,” “legal mumbo jumbo,” and failed to “make any legal sense whatsoever.” Defendant on appeal does not specifically assert that the trial court misread or misconstrued that submission, and so the court’s conclusion that there was nothing persuasive in it stands unchallenged.

In any event, defendant’s challenge to the trial court’s subject-matter jurisdiction stands as the only permissible basis upon which the default might now be challenged. “Defects in subject-matter jurisdiction cannot be waived and may be raised at any time.” *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002). See also See MCR 2.603(D)(1).

On appeal, defendant abandons his effort to avoid the legal impact of plaintiff’s complaint on the ground that it did not properly present his name or address, but instead attacks the ordinances under which plaintiff has proceeded on procedural grounds, and also the status of plaintiff itself as a municipality entitled to promulgate and enforce ordinances. However, these attacks go not to subject-matter jurisdiction, but rather to whether there was an underlying legal basis for the trial court’s exercise of jurisdiction. In casting his challenges under the rubric of jurisdiction, defendant seems to have been misled by the “‘loose practice . . . of saying that a court had no “jurisdiction” to take certain legal action when what is actually meant is that the court had no legal “right” to take the action, that it was in error.’” *Altman v Nelson*, 197 Mich App 467, 473; 495 NW2d 826 (1992), quoting *Buczkowski v Buczkowski*, 351 Mich 216, 221; 88 NW2d 416 (1958). In fact, more properly understood, “Jurisdiction of the subject matter is the right of the court to exercise judicial power over a class of cases, not the particular case before it; to exercise the abstract power to try a case of the kind or character of the one pending.” *Altman*,

197 Mich App at 472. The right of the Hillsdale Circuit Court to adjudicate a claim for equitable relief in connection with a parcel of real property in Hillsdale County is hardly in dispute.¹

Defendant's attack on the validity of the ordinances under which plaintiff acted on procedural grounds is an attack on those textual authorities. His attack on plaintiff's status as a municipality entitled to create and enforce ordinances is an attack on plaintiff's standing. Neither is properly characterized as an attack on the trial court's jurisdiction in the matter. Instead, those challenges are attacks on the propriety of the court's deciding in plaintiff's favor.

But because defendant defaulted in this matter by failing to answer, and has failed to show that the circuit court lacked subject-matter jurisdiction over this controversy, defendant has forfeited all other defenses in connection with the merits of plaintiff's cause of action but for contesting the question of remedies. See *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 79; 618 NW2d 66 (2000). When invited to do so, however, defendant merely referred the trial court to his motion to abate the complaint, which the court had concluded was "unintelligible . . . mumbo jumbo."

For these reasons, the trial court did not err in continuing with this case despite defendant's jurisdictional objections.

Nor did the court err in declining to advise defendant how he might better proceed as a litigant, or to invite defendant to file new or alternative pleadings or motions.

Pleadings offered in *propria persona* should be liberally construed in the interests of justice. See *Estelle v Gamble*, 429 US 97, 106; 97 S Ct 285; 50 L Ed 2d 251 (1976). But a tribunal must remain detached and neutral. See *Cain v Dep't of Corrections*, 451 Mich 470, 509; 548 NW2d 210 (1996). A court risks losing that neutrality if the court goes to great lengths to coach a litigant proceeding *in propria persona* in rules of law and practice.

Accordingly, the trial court in this instance was not acting outside of the principled range of outcomes when, in light of defendant's default and failure to move the court to set the default aside, it discredited defendant's rambling motion to abate the complaint, and also denied reconsideration, without coaching defendant on how he might have achieved more favorable results. Nor did the court abuse its discretion in declining to invite defendant to file an untimely answer or motion to set aside the default, or any other submission.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O'Connell

¹ The circuit court is a court of general jurisdiction, extending to "all civil claims and remedies except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605. See also Const 1963, art 6, § 1.